

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANTHONY SIMS,

Plaintiff,

v.

CITY OF SEATTLE, a municipal
corporation, and ROBERT BROWN,
GREGORY NASH, GARRETT
FOLLETTE, and BRADLEY
RICHARDSON, Officers of the Seattle
Police Department,

Defendants.

CASE NO. 2:22-cv-00483-TL

ORDER ON MOTION TO STAY

This matter is before the Court on Defendants' Motion to Stay or Continue Trial and Trial Related Deadlines Pending Disposition of Interlocutory Appeal. Dkt. No. 72. Having reviewed Plaintiff Anthony Sims's response (Dkt. No. 73), Defendants' reply (Dkt. No. 74), and the relevant record, the Court DENIES the motion without prejudice.

On July 31, 2023, the Court issued an order on the Parties' cross-motions for summary judgment. Dkt. No. 61. On August 3, the Court ordered the Parties to submit a joint status report,

1 including a proposed case schedule from mediation to trial. Dkt. No. 62. On August 16, the
2 Parties filed that report. Dkt. No. 64. In that report, Defendants noted the initiation of an
3 interlocutory appeal, but they did not request a stay (or note an anticipated motion to stay). *Id.* at
4 2. Instead, Defendants proposed a trial date of March 12, 2024, with corresponding pretrial dates.
5 *Id.* at 2. Plaintiff proposed a trial date of October 31, 2023. *Id.* On October 26, the Court adopted
6 Defendants' proposal with slight modification, setting a trial date of April 15, 2024. Dkt. No. 71.
7 Defendants now move to stay or continue the trial schedule they largely proposed. Dkt. No. 72;
8 *see also* Dkt. No. 74 (reply). Plaintiff opposes. Dkt. No. 73.

9 The Court finds that ordering a stay at this time would be premature. *See R.W. v.*
10 *Columbia Basin Coll.*, No. C18-5089, 2019 WL 13201975, at *5–7 (E.D. Wash. Oct. 21, 2019)
11 (applying factors from *Landis v. N. Am. Co.*, 299 U.S. 248 (1936), to a request for stay pending
12 interlocutory appeal); *see also Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1111–13 (9th Cir. 2005)
13 (applying *Landis* factors). While proceeding to trial on Plaintiff's *Monell* claim risks inconsistent
14 rulings and trials (*see* Dkt. No. 72 at 4–6), it is not yet reasonably certain that the Ninth Circuit
15 will not resolve the appeal prior to the trial date, nor is it reasonably certain that the outcome of
16 the appeal will be dispositive of Plaintiff's claim. There is also risk of harm to Plaintiff's right to
17 prosecute his claim, and to the public's interest in seeing this case resolved in a timely manner.
18 *See* Dkt. No. 73 at 3–4.

19 Defendants may refile their motion in February 2024, when the Parties and the Court are
20 likely to have a sharpened sense of prospects for the appeal. In the meantime, Defendants'
21 pending motion *in limine* will be renoted to the current pretrial deadline for such motions.

22 Accordingly, it is hereby ORDERED:

23 (1) Defendants' Motion to Stay or Continue Trial and Trial Related Deadlines

24 Pending Disposition of Interlocutory Appeal (Dkt. No. 72) is DENIED without

1 prejudice. Defendants may refile their motion **on or after February 15, 2024**, if
2 appropriate.

3 (2) Defendants' Motion *in Limine* to Exclude Expert Testimony of Russ Hicks (Dkt.
4 No. 44) is RENOTED for **March 11, 2024**.

5 Dated this 20th day of November 2023.

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8 Tana Lin
9 United States District Judge
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